FILED

051461 MAY 16 2006

OFFICE OF THE CLERK

No. 05-

IN THE

Supreme Court of the United States

MARINE MECHANICAL CORPORATION,

Petitioner,

v.

JOHN T. EASTMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Court of Appeals improperly determined that the District Court lacked federal question jurisdiction over Respondent's cause of action for wrongful discharge in violation of public policy premised solely upon federal statutes.

CORPORATE DISCLOSURE STATEMENT

Marine Mechanical Corporation does not have a parent corporation and no publicly held company owns 10% or more of Marine Mechanical Corporation's stock.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 438 F.3d 544 (6th Cir. 2006). *See also* Appendix A. The District Court's summary judgment opinion is reprinted at Appendix B.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its opinion on February 15, 2006. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case involves 28 U.S.C. § 1331, which provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

The following statutory provisions also are involved in this case: 18 U.S.C. § 287 and 31 U.S.C. §§ 3729 and 3730(h). Due to their length, pertinent portions of these provisions are reprinted in the Appendix. *See* Appendix C.

STATEMENT OF THE CASE

Petitioner Marine Mechanical Corporation ("MMC" or the "Company") operates a facility in Cleveland, Ohio, where it manufactures control rod drive mechanisms that are used in naval nuclear propulsion systems. The Company is the sole source supplier of these mechanisms to a customer that contracts directly with the United States Navy. Respondent John Eastman ("Eastman") formerly worked for MMC in the Company's Materials Engineering Department.

In November 2000, MMC implemented a new organizational structure in the Materials Engineering Department. As a result of this reorganization, Eastman began reporting to Mark Centa, an individual Eastman had supervised some years earlier. Upon learning of these changes, Eastman demanded a meeting with MMC's Vice President of Strategic Planning. According to Eastman, during this meeting he learned that he had not been selected for the supervisory position given to Mr. Centa due to concerns regarding Eastman's ability to support production schedules.

Not long after these organizational changes, in February 2001, Eastman prepared a memorandum that he captioned "Support of Production Schedules." In the memorandum, Eastman detailed mistakes allegedly made by others, primarily Mr. Centa. While it would not have been out of the ordinary for Eastman to raise issues concerning process and quality improvements, his memorandum contained unusual focus upon Mr. Centa, his competition for the supervisory position, and sought to compare Mr. Centa's performance to his own.

The Company conducted an exhaustive investigation of Eastman's assertions. At the conclusion of the investigation, the Company determined that Eastman's allegations lacked merit and that he had improperly sought to discredit others, particularly Mr. Centa. As a result, MMC issued Eastman a written warning on February 27, 2001.

Approximately four months later, Eastman prepared another memorandum purporting to respond to his disciplinary warning. Eastman sought to revisit his prior allegations and made further attacks against Mr. Centa. Once

again, MMC conducted a very thorough investigation and again determined that Eastman's allegations lacked merit and were meant to discredit others, particularly his supervisor, Mr. Centa. MMC terminated Eastman's employment on September 27, 2001, as a result of his violation of the February 2001 written warning.

Eastman filed his Complaint in the Cuyahoga County Court of Common Pleas on May 30, 2002, alleging a single cause of action for wrongful discharge in violation of public policy. Eastman alleged that MMC terminated his employment due to his alleged complaints about the quality of MMC's parts supplied to the United States Navy and MMC's alleged submission of claims for payment for these parts "in violation of federal law." Eastman premised his wrongful discharge claim solely upon two federal statutes, 18 U.S.C. § 287 and 31 U.S.C. § 3729.

MMC timely removed the action to the United States District Court for the Northern District of Ohio on the basis of federal question jurisdiction. On August 6, 2002, Eastman filed with the District Court a Motion to Remand. In a further effort to defeat jurisdiction, Eastman contemporaneously filed with the District Court his First Amended Complaint, alleging for the first time alternate state law bases of public policy in support of his wrongful discharge cause of action. On September 10, 2002, the District Court denied Eastman's Motion to Remand. Eastman filed a second motion seeking remand on September 2, 2003, which the District Court denied on September 18, 2003.

After the parties conducted substantial discovery, MMC filed with the District Court its Motion for Summary Judgment, seeking the dismissal of Eastman's claim. On

October 21, 2003, the District Court issued its Memorandum Opinion and Order, granting MMC's Motion for Summary Judgment. Appendix B. On November 19, 2003, Eastman filed his Notice of Appeal, appealing the District Court's grant of summary judgment in favor of MMC and the District Court's determination that it had federal question jurisdiction over the matter.

In an opinion filed on February 15, 2006, the Sixth Circuit vacated the District Court's judgment and reversed the orders denying Eastman's motions to remand. The Court of Appeals determined that Eastman's claim for wrongful discharge in violation of federal public policy did "not present a substantial federal question over which federal courts may exercise 'arising under' jurisdiction under 28 U.S.C. §1331." Appendix A at 8.

This Petition seeks review of the Court of Appeals' holding that the District Court lacked subject matter jurisdiction to adjudicate the claim.

REASONS FOR GRANTING THE PETITION

The Sixth Circuit misapplied this Court's precedent and thereby left to the state court a substantial question of federal law. More specifically, the Sixth Circuit's opinion is contrary to this Court's recent holding in *Grable & Sons Metal Products, Inc. v. Darue Engineering & Mfg.*, 125 S. Ct. 2363 (2005), and inconsistent with the guidance of *Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804 (1986).

This Court has long recognized that federal question jurisdiction exists where a claim requires the resolution of a substantial question of federal law, even if state law creates

the plaintiff's cause of action. Thus, a case may arise under federal law "where the vindication of a right under state law necessarily turn[s] on some construction of federal law. . . ." *Franchise Tax Board v. Laborers Vacation Trust*, 463 U.S. 1, 9 (1983). As explained by the Court in *Smith v. Kansas City Title & Trust Co.*,

> [t]he general rule is that where it appears from the bill or statement of the plaintiff that the right to relief depends upon the construction or application of the Constitution or laws of the United States, and that such federal claim is not merely colorable, and rests upon a reasonable foundation, the District Court has jurisdiction under this provision.

255 U.S. 180, 199 (1921).

Eastman's initial complaint in this case, which provided the basis for removal, presented a direct and substantial question of federal law. Although he utilized the vehicle of a state law cause of action, Eastman alleged that MMC terminated his employment in violation of the public policy manifested in two *federal* statutes – a federal criminal provision related to the presentment of false claims to the United States military or Navy, 18 U.S.C. §287, and the federal False Claims Act, 31 U.S.C. §3729 (the "FCA"). In order to prove his wrongful discharge claim, Eastman had to demonstrate that MMC's alleged actions actually violated the statutes upon which he premised his claim. *See, e.g., Yuhasz v. Brush Wellman, Inc.*, 341 F.3d 559, 568-579 (6th Cir. 2003) (under Ohio law, proof of a claim for wrongful discharge in violation of public policy requires the plaintiff to demonstrate a violation of the underlying statute or other

relied upon source of public policy). Having alleged no state law bases of public policy in support of his claim, Eastman could only prove his claim by showing a violation of these federal statutes.

In the recent case of *Grable & Sons Metal Prods., Inc. v. Darue Engineering & Mfg.*, this Court examined a highly analogous situation involving the removal of a state law quiet-title action that required the interpretation of federal tax law. 125 S. Ct. at 2366. This Court found that Grable's state law claim "warrant[ed] federal jurisdiction" because it placed directly at issue the interpretation of a federal statute:

> Whether Grable was given notice within the meaning of the federal statute is thus an essential element of its quiet title claim, and the meaning of the federal statute is actually in dispute; it appears to be the only legal or factual issue contested in the case. The meaning of the federal tax provision is an important issue of federal law that sensibly belongs in federal court.

Id. at 2368. Similarly, in the present case, Eastman's wrongful discharge claim as plead in his initial Complaint required that he establish a violation of federal statutory law. In other words, the case turned on the question of whether MMC had violated these provisions through its discharge of Eastman. As in *Grable*, the meanings of the federal statutes relied upon by Eastman were "an essential element" of his cause of action.

The present case actually presents a much stronger basis for the exercise of federal jurisdiction than did *Grable*. In this case, the primary federal statute upon which Eastman

sought to rely, the FCA, contains a private remedy designed to address allegations precisely like Eastman's. The FCA's anti-retaliation provision provides "any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against" with "all relief necessary to make the employee whole." 31 U.S.C. §3730(h).

The presence of a private cause of action in the FCA is extremely significant in considering the existence of subject matter jurisdiction in this case. In *Merrell Dow*, this Court recognized that Congress' provision of a private federal remedy is an important indication of the intent to have federal courts examine the federal question at issue. Indeed, in *Merrell Dow*, Congress' failure to provide a private remedy for violations of the federal Food, Drug, and Cosmetic Act was determinative to this Court's holding:

> We conclude that a complaint alleging a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. 1331.

478 U.S. at 817.

In *Grable*, this Court characterized the presence of a private cause of action as a "welcome mat" to the federal courts. 125 S. Ct. at 2370. While the absence of a federal remedy was not dispositive of the jurisdictional question in *Grable*, it certainly was the strongest argument against federal jurisdiction.

In seeking to harmonize its opinion with the holding in *Merrell Dow*, the Court of Appeals in this case inexplicably determined that Eastman did not have a private right of action under the FCA. Appendix A at 6. This statement is all the more puzzling in light of the fact that the Court of Appeals cited directly to the pertinent non-retaliation provision contained in the FCA. *Id.* This error led the Court of Appeals to conclude that *Merrell Dow* supported its determination that the District Court lacked jurisdiction. To the contrary, *Merrell Dow* demonstrates that Eastman's claim presented a federal question.

Also incorrect was the Court of Appeals' determination that "the meaning of the two statutes cited by [Eastman] is not in serious dispute in this case." *Id.* As in *Grable*, Eastman placed the interpretation of the cited federal statutes directly at issue, and he could not make out a claim for wrongful discharge without first establishing a statutory violation. The Court of Appeals' statement that MMC did not dispute the prohibitions contained in the applicable federal laws misses the point. MMC absolutely disputed Eastman's assertions that the Company's actions violated these statutes, and this presented a substantial dispute between the parties requiring the interpretation of these federal laws. *See Grable*, 125 S. Ct. at 2368 ("Whether Grable was given notice within the meaning of the federal statute is thus an essential element of its quiet title claim, and the meaning of the federal statute is actually in dispute; it appears to be the only legal or factual issue contested in the case").

Finally, the Court of Appeals' conclusory determination that a finding of subject matter jurisdiction in this case would somehow open the floodgates for the removal of state law employment litigation claims into federal court is

unsupported and insufficient to defeat jurisdiction in light of this Court's guidance in *Grable* and *Merrell Dow*. This case presented a unique scenario in which a plaintiff sought to premise his wrongful discharge cause of action *solely* upon federal statutes. Had Eastman initially cited to any state law basis of public policy, the case would not have presented a federal question. *See Long v. Bando Mfg. of America, Inc.*, 201 F.3d 754, 760 (6th Cir. 2000) (remanding a wrongful discharge cause of action where the plaintiff had alleged alternate state law bases of public policy and holding "that there is no federal question jurisdiction when the complaint on its face states alternate theories supporting a state-law claim, at least one of which does not involve a federal question"). Indeed, it is noteworthy that upon MMC's removal of the action Eastman immediately amended his complaint and was able to add various, alternate state law bases of public policy in support of his claim.

Eastman's claim also was unique because it rested upon the meaning of a federal law, the FCA, which provided a private remedy to address allegations just like Eastman's. This "welcome mat" to the federal courts was all but ignored by the Court of Appeals and outweighs the speculative concerns of increased employment litigation in the federal courts. At the very least, the Court of Appeals failed to follow this Court's instructions from *Grable* and conduct a meaningful "assessment of any disruptive portent in exercising federal jurisdiction." *Grable*, 124 S. Ct. at 2368.

CONCLUSION

For all the foregoing reasons, Petitioner Marine Mechanical Corporation respectfully requests that the Supreme Court grant review of this matter.

Respectfully submitted,

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